

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
NONRULE POLICY DOCUMENT

Title: Guidance for Interpretation of the Term “Emission Data”

Identification Number: Air-031-NPD

Date Originally Effective:

Dates Revised: none

Other Policies Repealed or Amended: none

Brief Description of Subject Matter: Definition of the term “emission data” as used for purposes relating to the Clean Air Act and the Indiana Code.

Citations Affected: IC 13-14-11-1

This nonrule policy document is intended solely as guidance and does not have the effect of law or represent formal Indiana Department of Environmental Management (IDEM) decisions or final actions. This nonrule policy document (NPD) shall be used in conjunction with applicable laws. It does not replace applicable laws, and if it conflicts with these laws, the laws shall control. This NPD will be made available to the public forty-five (45) days prior to presentation to the air pollution control board. Then, this NPD may be put into effect by IDEM thirty days after presentation to the air pollution control board, pursuant to IC 13-14-1-11.5. After such period, IDEM will submit the policy to the Indiana Register for publication. Revisions to the policy will follow the same procedure of notice, presentation to the board and publication.

PURPOSE

The purpose of this nonrule policy is to describe the policy that IDEM will use to define the term “emission data”, as it relates to the trade secret exemption in public records found in Indiana Code 5-14-3-4 for purposes of permitting, data collection, modeling and compliance and related activities. IDEM’s interpretation of “emission data”, as it relates to data collection, permitting, air quality modeling and compliance is set forth in this NPD.

BACKGROUND

Both the Clean Air Act, Sections 114, 208 and 307(a), and Indiana's public records' statutes, IC 5-14-3-4 and IC 13-14-11-1(b), provide for the confidential treatment of "trade secrets" or "proprietary data" submitted to U.S. EPA or IDEM, respectively, with the exception of "emission data".

The Clean Air Act, in section 114(c), specifically states that “emission data” are public records that are not eligible for the trade secret disclosure exemption. This exclusion states,

Any records, reports or information obtained under subsection (a) of this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, (other than emission data) to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets... (42 USC Section 7414(c) (CAA 114(c))).

In order to define the term “emission data”, EPA promulgated 40 CFR 2.301(a)(2). It also

issued a guidance document at 56 FR 7042 and further enacted part of that guidance in the Consolidated Emission Reporting Rule (CERR) found at 40 CFR 51.

Indiana has similar language to the Clean Air Act in its public record statute found at IC 13-14-11-1(b). Indiana does not, however, have an Indiana statute or rule that defines “emission data”, so IDEM has used EPA’s rules, guidance and interpretations in making “emission data” confidentiality determinations under 326 IAC 17.1.

IDEM has the authority to interpret rules and statutes through guidance documents under IC 13-14-1-11.5. Specifically, IDEM may use for guidance, “a policy or statement that:

- (1) Interprets, supplements, or implements a statute or rule;
- (2) has not been adopted in compliance with IC 4-22-2;
- (3) is not intended by the department to have the effect of law; and
- (4) is not related solely to internal department organization.”

This NPD interprets IC 13-14-11-1(b), has not been promulgated as a rule using IC 4-22-2, is not intended to have the effect of law and is not related solely to internal department organization and therefore falls into the policy requirements of IC 13-14-1-11.5.

POLICY

When required to apply or interpret the term “emission data”, IDEM intends to use the following definition:

“Emission data”, for purposes of IC 13-14-11, means any of the following:

(1) The identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any contaminant that:

- (A) has been emitted from; or
- (B) results from any emission by;
an emission unit authorized to emit under an applicable standard or limitation.

(2) The name, address, or other description of the location and the nature of the emission unit necessary to identify the emission unit, including a description of the device, equipment, or operation constituting the emission unit.

(3) Information necessary to:

(A) determine a permit condition that assures compliance with an applicable requirement; or

(B) determine or calculate an enforceable emission limitation, including:

- (i) rate of operation;
- (ii) rate of production;
- (iii) rate of raw material usage;
- (iv) material balance; or
- (v) equipment capacity;

if the information is contained in a permit or the technical support document to ensure that the permit is practically enforceable under state or federal law.

IDEM will consider data and information meeting the above definition as “emission data” within the meaning of state and federal law, which must be disclosed to the public upon request. This information is not eligible for the trade secret exclusion. This definition applies to data currently held by IDEM upon public request as well as information submitted in the future. This definition applies only to the data listed above. However, this NPD does not affect a permittee's right to request confidential treatment of information submitted to IDEM if such information is

submitted in accordance with 326 IAC 17.1, to IDEM as a trade secret. IDEM will then make a determination whether the information constitutes “emission data” based on this NPD. Permittees who have previously made a claim of confidentiality under 326 IAC 17.1, or its predecessor rules, or who make a confidentiality claim in the future, will continue to receive notice and an opportunity to appropriately respond to a determination as set forth in 326 IAC 17.1-5. Determinations will continue to be made on a case-by-case basis for data not specified in this NPD.

POLICY INTERPRETATION AND EXAMPLES

IDEM uses “emission data” for a variety of regulatory purposes, including permits, emission statements, air quality modeling and compliance activities. Following is a discussion of how IDEM will apply the definition of “emission data” stated above in these contexts.

PERMITS

The permitting program uses “emission data” when determining applicable requirements for construction and operating permits. The following are examples of “emission data” in permits: applicability determinations based on potential to emit, process weight rate information in 326 IAC 6-3, process flow diagrams and Best Achievable Control Technology (BACT) determinations.

Applicability of the permit program is based on a source’s potential to emit. Potential to emit is generally determined using the maximum capacity of a unit. This information is “emission data” under paragraph (3) of the definition of “emission data” set forth above. However, actual maximum capacity is not needed if the permittee agrees to an enforceable limit on its potential to emit (PTE). An enforceable limit is created when the permittee stipulates that the permittee’s capacity is greater than the highest relevant capacity for PTE purposes and over the PTE threshold. In these cases only the enforceable limit is needed to determine PTE and the actual maximum capacity would not constitute “emission data”.

The process weight rate rule, found at 326 IAC 6-3, requires throughput information to calculate the correct particulate limit. This process weight rate information is “emission data” under paragraph (3) of the definition of “emission data” set forth above. However, if a permittee agrees to comply with an emission limit for 326 IAC 6-3 and stipulates that the capacity is above the corresponding process weight rate, then maximum throughput information would not be needed to determine the particulate limit and therefore would not constitute “emission data”.

Process flow diagrams included in permit applications, at the request of IDEM, that contain “emission data” and are claimed as confidential because they graphically depict a manufacturing process that is itself confidential trade secret information, shall not constitute “emission data” under the definition of “emission data” set forth above, provided the “emission data” of interest on the process flow diagram appears elsewhere in the permit application.

When IDEM performs a BACT analysis pursuant to 326 IAC 2-2 and 326 IAC 8-1-6, information needed to determine that limit constitutes “emission data”. This includes, but is not limited to, information that explains why control technology is or is not practical or cost-effective; and why a source is or is not comparable to other sources. For example, if maximum capacity is needed in these instances, then the maximum capacity would constitute “emission data” under the definition of “emission data” set forth above. However, if this information is not needed to make a BACT determination, then it would not constitute “emission data”.

Another example of "emission data" in the permitting context is expected pollutant emission rates for pollutants, which may not be subject to specific requirements under state or federal law. NO_x is an example of a pollutant that, for many types of emission units, is not regulated under state or federal law, so it would not be necessary in the course of new source review to determine a permit condition or emission limit. In this example, the expected emission rate would be considered "emission data" and be made publicly available in a Technical Support Document prior to issuance of the new source review permit, even if some of the information used to arrive at that rate continues to qualify for confidential treatment, pursuant to 326 IAC 17.1, as a trade secret.

In addition to the above examples, if information normally given to IDEM is not needed to make a permitting determination and the permittee does not wish to disclose that information, then the permittee should not submit it as part of their application or correspondence. The permittee is then assured that the information is kept confidential. IDEM will revise its permit application form instructions to be consistent with this NPD.

EMISSION STATEMENTS

Many air emitting source permittees are required to submit an emission statement on an annual basis according to 326 IAC 2-6. IDEM uses this information for a variety of planning and compliance purposes and makes it available to the public. IDEM also must report much of the emission statement information to EPA, pursuant to 40 CFR 51, the Consolidated Emission Reporting Rule (CERR). IDEM will consider information that is necessary to determine actual air emissions to be "emission data" reportable under 40 CFR 51, CERR (see attachment A). Pursuant to 40 CFR 51.15(d), EPA considers all information supplied under the CERR to be "in the public domain and cannot be treated as confidential". EPA recognizes that state and federal confidentiality requirements may be different and a final reconciliation can be made prior to submission of confidential state information. It is IDEM's intent to treat any confidential trade secret information, which is not "emission data", reported pursuant to 326 IAC 2-6 as confidential.

It is important to note, that if a permittee takes an enforceable limit to avoid a permitting program or other regulation (and depending on how the source monitors compliance), certain information would not constitute "emission data." For example, a source's actual maximum capacity or design capacity would not constitute "emission data" if the permittee took an enforceable limit to avoid a permitting program or other regulation, unless the unit emits other pollutants for which a maximum limit has not been set and the limit is not expressed in lbs/hour. Additionally, if annual emissions can be determined through data other than actual throughput of raw material or capacity (for example, Continuous Emissions Monitoring Systems [CEMS] data or airflow and grain loading), then throughput of raw material information, maximum capacity, or design capacity would not constitute "emission data."

With the above qualifications, the following constitutes "emission data" heat content (fuel, annual average), ash content (fuel, annual average), sulfur content (fuel, annual average), pollutant code, activity/throughput (annual), annual emissions, emission factor, winter throughput (%), spring throughput (%), summer throughput (%), fall throughput (%), hours/day in operation, start time (hour), day/week in operation, weeks/year in operation, design capacity, primary control efficiency (%) and secondary control efficiency, facility ID code, Point ID code, process ID code, stack ID code, site name, physical address, 'x' stack coordinate (latitude), 'y' stack coordinate (longitude), stack height, stack diameter, exit gas temperature, exit gas velocity,

exit gas flow rate, SIC/NAICS and control device type.

AIR QUALITY MODELING

The modeling program uses certain permitting and emission statement data to perform accurate modeling for air quality planning purposes. Therefore, much of these data is also “emission data”. In addition to the “emission data” of emission statements and permitting, modeling uses the following information: property line boundaries and dimensions and location of the building next to the stack. These two provisions constitute “emission data” under the definition of “emission data” set forth above.

COMPLIANCE

IDEM uses a variety of information either submitted by or collected from sources to determine compliance with emission limitations. Information necessary to determine whether a source is in compliance with an enforceable emission limitation established by permit, rule, or law constitutes “emission data” as set forth above. As noted above, however, sources may take permit limits or establish other conditions that render certain data unnecessary to determine compliance with these limits. In that circumstance, data deemed not to constitute “emission data” in the permitting context would also not constitute “emission data” for compliance purposes.

ADDITIONAL INFORMATION

Copies of this policy are available at the Office of Air Quality, Indiana Department of Environmental Management, Indiana Government Center-North, Room N1003, 100 North Senate Avenue, Indianapolis, Indiana 46204.